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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUL 08 2003

File: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

Petition: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:


INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center. The Administrative Appeals Office (AAO) summarily dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen. The motion will be dismissed.

The petitioner is a church. It seeks to classify the beneficiary as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(4), to perform services as an assistant director of religious education. The director determined that the petitioner had not established that the beneficiary had the requisite two years of continuous work experience in the occupation immediately preceding the filing date of the petition. In addition, the director determined that the petitioner had not established its ability to pay the beneficiary's proffered wage.

The AAO summarily dismissed the petitioner's appeal on January 31, 2001, because that appeal did not contain any substantive arguments or evidence that the director had not already addressed. On March 1, 2001, the petitioner filed a second appeal on Form I-290B, Notice of Appeal. We consider this appeal to be a motion, because appellate decisions are not subject to appeal, but they are subject to reopening or reconsideration on motion.

8 C.F.R. § 103.5(a)(2)(i)(ii) requires that a motion to reopen state the new facts to be proved at the reopened proceeding; and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(3)(i)(ii) requires that a motion for reconsideration state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The petitioner's initial submission on motion was limited to the aforementioned Form I-290B, with counsel's assertion that a brief would be forthcoming within 30 days. Counsel did not address the AAO's stated grounds for the summary dismissal of the previous appeal. Thus, on motion, the petitioner did not state any new facts to be proved; provide any affidavits or other documentary evidence; state reasons for reconsideration; or cite precedent decisions.

The petitioner subsequently submitted a brief from counsel and copies of bank documents. Nothing in this submission contests the AAO's summary dismissal of the appeal. Rather, on motion, counsel seeks to revisit the director's initial denial of the petition, offering arguments and evidence that should have been, but were not, offered on appeal from that first decision.

The regulation at 8 C.F.R. § 103.3(a)(2)(vii) allows for limited circumstances in which a petitioner can supplement an already-submitted appeal. This regulation, however, applies only to appeals, and not to motions to reopen or reconsider. There is no analogous regulation that allows a petitioner to submit new evidence or arguments in furtherance of a previously filed motion. By filing a motion, the petitioner does not secure an open-ended period in which to supplement the record.

Furthermore, as the petitioner was advised on the cover sheet of the AAO's dismissal notice, 8 C.F.R. § 103.5(a)(1)(i) requires that a motion to reopen or to reconsider must be filed within 30 days of the decision that the motion seeks to reopen or reconsider. The petitioner cannot circumvent this requirement by filing a skeletal motion within the 30-day period and supplementing the motion at a later date. The same regulation states that failure to file a motion to reopen¹ before this period expires may be excused in the discretion of the Service (now the Bureau) where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. In this instance, the petitioner has not shown that the failure to submit a substantive motion during the initial 30-day period was beyond the petitioner's control.

Because the petitioner did not submit a substantive motion during the time allotted, and because the petitioner has not overcome or even contested the AAO's stated grounds for summarily dismissing the underlying appeal, the AAO sees no valid grounds to disturb the denial of the petition or the dismissal of the appeal. Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet the requirements of a motion to reopen or to reconsider shall be dismissed.

ORDER: The motion is dismissed.

¹ The regulation contains no analogous allowance for untimely filings of motions to reconsider.